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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

RICHARD KADREY, et al.,)	
)	
Plaintiffs,)	
)	
VS.)	NO. C 23-03417 VC
)	
META PLATFORMS, INC., a)	
Delaware corporation,)	
)	
Defendant.)	
)	
CHRISTOPHER FARNSWORTH, et al.,)	
)	
Plaintiffs,)	
)	
VS.)	NO. C 24-06893 VC
)	
META PLATFORMS, INC., a)	
Delaware corporation,)	
)	
Defendant.)	
)	

San Francisco, California
Friday, October 4, 2024

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

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U.S. District Court - Official Reporter

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Friday - October 4, 2024

1:05 p.m.

P R O C E E D I N G S

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THE CLERK: Now calling civil cases 23-3417, Kadrey, et al. versus Meta Platforms, Inc. and 24-6893, Farnsworth versus Meta Platforms, Inc.

Will Counsel please state your appearances for the record starting with the Plaintiff for Kadrey.

MR. SAVERI: Good afternoon, Your Honor, Joseph Saveri for the Plaintiffs.

THE COURT: Hi.

MR. BOIES: Good afternoon, Your Honor, David Boies of Boies Schiller Flexner for the Plaintiffs.

THE COURT: Hi.

MR. YOUNG: Good afternoon, Your Honor, Chris Young, Joseph Saveri Law Firm for the Kadrey Plaintiffs.

THE COURT: Hi.

MR. SWEATMAN: Good afternoon, Your Honor, Alex Sweatman from Cafferty Clobes Meriwether & Sprengel on behalf of the Plaintiffs.

THE COURT: Hi.

MR. PRITT: Good afternoon, Your Honor, Maxwell Pritt, Boies Schiller Flexner for the Plaintiffs.

THE COURT: Hi.

MS. KELLER: Good afternoon, Your Honor, Amy Keller,

1 DiCello Levitt LLP on behalf of Plaintiffs.

2 **THE COURT:** Hi.

3 **MR. PANUCCIO:** Good afternoon, Your Honor, Jesse
4 Panuccio with Boies Schiller also for Plaintiffs.

5 **THE COURT:** Hi.

6 **MR. BUTTERICK:** Your Honor, good afternoon, Matthew
7 Butterick for the Kadrey Plaintiffs.

8 **THE COURT:** Hi. Is that it for the Kadrey Plaintiffs?

9 (No response.)

10 **THE COURT:** I think so. All right. Who else do we
11 have?

12 **MS. GEMAN:** Good afternoon, Your Honor, for the
13 Farnsworth Plaintiff Rachel Geman, Lieff Cabraser.

14 **THE COURT:** Hi.

15 **MR. STOLER:** Good afternoon, Reilly Stoler also with
16 Lieff Cabraser Heimann & Bernstein also for the Farnsworth
17 Plaintiff.

18 **THE COURT:** Hello.

19 **MS. CABRASER:** Good afternoon, Your Honor, Elizabeth
20 Cabraser of Lieff Cabraser for the Kadrey Plaintiffs as well.

21 **THE COURT:** Hi.

22 **MR. HUTCHINSON:** Good afternoon, Your Honor, Daniel
23 Hutchinson of Lieff Cabraser Heimann & Bernstein.

24 **THE COURT:** Hi.

25 **MR. SHOLDER:** Good afternoon, Your Honor, Scott

1 Sholder from Cowan DeBaets Abrahams & Sheppard also on behalf
2 of the Farnsworth Plaintiffs.

3 **THE COURT:** Hi.

4 **MS. COLE:** Good morning, CeCe Cole from Cowan DeBaets
5 Abrahams & Sheppard also on behalf of the Farnsworth Plaintiff.

6 **THE COURT:** Hi.

7 **MS. COLE:** And as a panelist, there is also Nancy
8 Wolff from Cowan DeBaets Abrahams & Sheppard on behalf of the
9 Farnsworth Plaintiff.

10 **THE COURT:** Okay, hi. Is that it for Farnsworth?

11 (No response.)

12 **THE COURT:** Okay.

13 **MS. GEMAN:** Yes, Your Honor.

14 **MR. GHAJAR:** Good afternoon, Your Honor, Bobby Ghajar
15 from Cooley on behalf of Defendant Meta Platforms.

16 **THE COURT:** Okay.

17 **MS. HARTNETT:** Good afternoon, Your Honor, Kathleen
18 Hartnett also from Cooley for Meta.

19 **THE COURT:** Hi.

20 **MR. WEINSTEIN:** Good afternoon, Your Honor, Mike
21 Weinstein also from the Cooley firm and also for Defendant.

22 **MS. DUNNING:** And I think perhaps last, Angela Dunning
23 from Cleary Gottlieb on behalf of Meta. Good afternoon,
24 Your Honor.

25 **THE COURT:** Good afternoon. All right, the party is

1 growing. Welcome, everybody.

2 Does -- I don't really know what to do right now. Does
3 anybody have any ideas on how we should proceed given the size
4 of the party now?

5 **MR. BOIES:** Your Honor, this is David Boies. I would
6 suggest there may be a couple of threshold issues. One is
7 whether the recently case filed [sic] is a related case. I
8 think everybody agrees that it is a related case.

9 **THE COURT:** Yeah, and I think I granted the motion to
10 relate; but if I didn't, I will do so -- if I haven't already,
11 that's granted. The cases are related.

12 **MS. GEMAN:** It was granted, Your Honor. Thank you.

13 **THE COURT:** Okay.

14 **MR. BOIES:** And then I think a second issue is what is
15 the schedule and whether there is going to be an extension of
16 the schedule and related to that is how the recently filed
17 litigation is coordinated with the existing litigation.

18 **THE COURT:** Right. And, I mean, it may be that the
19 latter question should be answered first; right.

20 I mean, usually when we get two basically identical
21 proposed class actions -- and I actually don't know for sure if
22 they are basically identical but it seems like they are -- you
23 know, usually when we had two basically identical proposed
24 class actions, we kind of make a decision about how they are --
25 how they are going to proceed.

1 And one thing we sometimes do is that we consolidate both
2 of them and then we appoint lead counsel, right, to represent
3 the proposed class.

4 Sometimes we will stay the later filed case and allow the
5 earlier filed case to go forward or if there's a good reason,
6 sometimes we might stay the earlier filed case and allow the
7 later case to go forward although that is exceedingly rare;
8 right. I would think there would have to be a very good reason
9 for that.

10 So, it strikes me that maybe before we talk about what we
11 are going to do with the schedule, we need to figure out how
12 these cases are going to operate together.

13 **MS. HARTNETT:** Your Honor, I would be happy to speak
14 to that from Meta's perspective when appropriate.

15 **THE COURT:** Go for it.

16 **MS. HARTNETT:** Your Honor, from our point of view, the
17 newly filed case should be stayed. It has been related as
18 Your Honor noted. It could have been filed long ago in terms
19 of being part of the party. The party has been going on.

20 We have had several cases that were consolidated together.
21 The schedule has been proceeding. We can talk about the
22 request for an extension, but we don't believe the new case
23 should change the calculus about how to resolve the existing
24 case.

25 **THE COURT:** Okay. And, Mr. Boies, what's your view on

1 that?

2 **MR. BOIES:** I agree, Your Honor, that the new case
3 should not change the schedule that the Court would otherwise
4 set.

5 I think the case could be stayed. I think that we have
6 not had a chance to consult -- at least I have not with the
7 Counsel for the recently filed case.

8 So, in terms of how they are integrated with the existing
9 case or whether it is stayed, it's not something I have a point
10 of view on.

11 I do, though, agree with Counsel for Meta that the
12 addition of this case should not delay the schedule that the
13 Court would otherwise set.

14 **THE COURT:** Okay. And then whoever is speaking for
15 the Farnsworth Plaintiffs, what's your view on -- you know, how
16 the cases should proceed --

17 **MS. GEMAN:** Thank you, Your Honor.

18 **THE COURT:** -- in relation to one another?

19 **MS. GEMAN:** Thank you, Your Honor, Rachel Geman.

20 We believe with some but not all of what has been said.
21 Certainly the filing of our case is not meant to itself cause a
22 delay in the proceedings. We are here to bring our experience
23 in these cases to help -- to work and to help safeguard the
24 interest of book authors.

25 We -- as Mr. Boies says, we have not had the chance to

1 speak directly with him; but we have been in collaborative
2 touch with certain of the parties.

3 And whether Your Honor would be inclined to, perhaps,
4 consolidate for pretrial purposes or have the cases proceed in
5 tandem, we think that would be the most sort of procedurally
6 efficacious.

7 Certainly we are in no way trying to stay the first filed
8 case nor are we trying to stay ourselves. We are here to work
9 collaboratively mindful of Your Honor's directive in late
10 September that an augmented team might benefit the larger
11 class.

12 **THE COURT:** Right. I mean, the -- the idea of both
13 cases proceeding in tandem and -- but remaining separate -- I
14 mean, you were suggesting that they sort of be coordinated
15 together for pretrial purposes but remain separate and have --
16 I guess I don't understand that.

17 I mean, to the extent it's the same class that you-all are
18 proposing to represent, right, I mean, what we usually do is we
19 decide who is going to be lead counsel to represent that class
20 or that proposed class. And to the extent that you-all are
21 competing, you know, to represent the proposed class, I think I
22 have to decide who is going to be lead counsel.

23 And or to the extent that you are proposing that, you
24 know, the cases be consolidated and that you -- you know, both
25 the Cabraser firm and the Boies firm serve jointly as lead

1 counsel and will work together, I mean, I could entertain that
2 too, I suppose; but I -- I'm not totally sure I understand what
3 your proposal was.

4 But to the extent that you are suggesting that the cases
5 should remain separate and such that there could potentially be
6 two class action trials, I mean, that doesn't make any sense,
7 right, to the extent it is the same proposed class. I mean,
8 there needs to be one -- one case -- one motion for class
9 certification and one class action trial if a trial is
10 ultimately needed. And then -- and I think there needs -- you
11 know, we need to figure out who lead counsel for the class is
12 going to be.

13 And so, it strikes me that that's -- one option is to go
14 that route, and the other option is to stay the later filed
15 case. And, you know, I think those are the only two reasonable
16 options.

17 I'm happy to hear suggestions for other reasonable
18 options, but I think those are probably the only two.

19 **MS. GEMAN:** Thank you, Your Honor. It is helpful as a
20 gating issue. Your Honor is correct, that there is certainly
21 overlap in the classes. Our class is a little bit different
22 than the Kadrey class insofar as it is more limited, but
23 certainly we understand that is arguably sort of a subset of
24 the larger class in the other case.

25 **THE COURT:** How is it more -- how is it more limited?

1 **MS. GEMAN:** Our class, Your Honor, is limited to
2 authors with registered copyrights -- and I'm looking at
3 paragraph 55 of our complaint -- whose works were used by Meta
4 for LLM training and research development.

5 We also have a feature of the class where the works are
6 assigned an ISBN number, but I think the high-level point is
7 these are book authors with registered copyrights.

8 **THE COURT:** Okay. As opposed to -- and remind me what
9 the proposed class is in the earlier filed case.

10 **MS. GEMAN:** Yes, Your Honor. The case there is
11 copyright holders, more generally. I believe theirs is all
12 persons or entities domiciled in the U.S. that own a U.S.
13 copyright and any work that was used as training data for any
14 version of the language models.

15 So, they are both -- as all class definitions, they are
16 perhaps both a little wordy, but ours is essentially more
17 narrow in a couple of respects.

18 **THE COURT:** Okay.

19 **MS. GEMAN:** With respect to Your Honor's question,
20 though -- and I don't think this detracts from Your Honor's
21 point that you see two options -- I think certainly our
22 preference would be to continue to speak collaboratively with
23 the current counsel to see if there is a proposal for
24 consolidation or if Your Honor wanted to consolidate at this
25 point, it's certainly -- that would be our preference rather

1 than being stayed.

2 **MS. HARTNETT:** Your Honor, if I may for Meta -- this
3 is Kathleen Hartnett -- the reason why we took the position of
4 staying is that case, as you can tell, there already are a lot
5 of counsel involved here -- and we can talk more about it when
6 we get to the issue of scheduling -- but our client has been
7 continuing to make its best efforts to create the full record
8 that Your Honor asked for.

9 And so, our main concern at this point -- where the case
10 has been bifurcated, we are not even at the class stage yet --
11 is just to try to get through the discovery efficiently so that
12 you can have your summary judgment motions.

13 And so, I think we are just concerned that we don't
14 really -- we are indifferent to which counsel we oppose in the
15 sense that we just want to litigate this case efficiently; and
16 we just see this as potentially complicating things further by
17 adding another Plaintiff and other issues where it is already
18 complicated enough.

19 And I would like to speak to the scheduling issues too
20 because I think that may inform -- you know, as much as there
21 was concern about is the record coming together, you know,
22 hopefully it is.

23 **THE COURT:** Okay. Go ahead and what do you want to
24 say about the scheduling stuff?

25 **MS. HARTNETT:** Well, I guess I will say two things.

1 One is that unfortunately, you know, existing counsel has not
2 heeded your admonition fully at the September 20th hearing
3 about completing the discovery within two weeks of the close.

4 Since that hearing, they have actually cancelled three
5 depositions of Meta witnesses. They didn't take a date for
6 another one, the Chief AI Researcher; and we still have to
7 schedule two other depositions, the 30(b)(6) and the deposition
8 that was ordered of Mr. Zuckerberg.

9 They did take one deposition yesterday of Meta's head
10 of -- Vice President for AI, and they took two others.

11 Meanwhile, Plaintiffs have actually completed all -- we
12 have completed our depositions of Plaintiffs, seven of them,
13 except for three next week. Two witnesses have been sick. One
14 was out of the country.

15 So, from our perspective, we are wrapping things up the
16 way Your Honor contemplated. Unfortunately, kind of rather
17 than just complete the discovery that they were given and make
18 that full record, they have not done that but have re-filed
19 this motion.

20 And so, what we -- our perspective at this point is
21 they -- just right before the call today offered -- asked us to
22 get dates for the three that they had cancelled. We are happy
23 to provide those. We would like to complete the depositions
24 that were ordered. Complete the tie up issues in discovery and
25 get this to expert discovery, which is going to be an important

1 part of the summary judgment record.

2 So, I just say that only for two reasons, which is, one,
3 the renewed motion to extend the case schedule, we respectfully
4 submit should not be well taken because they haven't really
5 progressed much more than before but just are making the same
6 arguments again.

7 **THE COURT:** Although I assume -- to be fair, I mean, I
8 assume -- they haven't spoken to this -- I'm assuming what
9 happened with the three depositions that were cancelled is new
10 counsel has come in. New counsel is probably going to be
11 taking those depositions, and they are not ready to take the
12 depositions yet and --

13 **MS. HARTNETT:** That actually -- that was not the case.
14 Oh, they did cancel at least one after new counsel. What they
15 wanted to do was have -- expand the number of custodians, and
16 they wanted to get those custodial documents before the
17 deposition. And then Magistrate Judge Hixson this week ruled
18 they were too late in asking for that.

19 And so, we were happy to proceed with those depositions
20 because we had scheduled them in the -- we had scheduled two in
21 the UK; having a witness from France come to the UK to make
22 sure that it was easier for them to take the discovery, and we
23 had another deposition scheduled.

24 So, and so far existing counsel has been taking the
25 depositions. So, from our perspective, this really is at the

1 end of the road. We are there. The end is in sight, and I
2 think we keep getting distracted from that by these repetitive
3 motions; and all they need to do is take the six remaining
4 depositions they have and then they will have the record they
5 need.

6 **MR. BOIES:** Your Honor, if I could address that first,
7 I think the Court is correct; that the depositions that were
8 cancelled are depositions that new counsel intends to take.

9 I don't want to get into my very first appearance before
10 the Court sort of back-and-forth with Meta's counsel; but I
11 don't think it is fair to say that the -- that the issue here
12 is exclusively one on the Plaintiffs' side.

13 Yesterday there was a substantial production of additional
14 source code from the Defendant that we have not yet had an
15 opportunity to review.

16 On September 10th a hard drive was produced to us labeled
17 the -- hard drive number 4, which had already been produced.
18 We thought it was a duplicate. We later found out -- counsel
19 later found out that it was not a duplicate and that it
20 contained one of the compilations of the copyrighted works that
21 Meta had used. And so, that is now being analyzed.

22 **THE COURT:** Could I -- Mr. Boies, can I interrupt you
23 for just a second?

24 **MR. BOIES:** Yes.

25 **THE COURT:** One of the things that troubled me about

1 your motion to extend the litigation deadlines was that it was
2 clear to me when I -- when we had our previous hearing, right,
3 that these delays were the fault of the Plaintiffs; and it is
4 clear from Judge Hixson's rulings; that he is convinced also
5 that the Plaintiffs have been dragging their feet and they have
6 not been pushing the case forward.

7 But in your -- in your renewed motion for an extension, it
8 seemed like all you were doing was blaming the Defendants for
9 delays, and I guess -- you know, I found that really hard to
10 swallow; and I find it really hard to entertain another request
11 to extend the discovery deadlines when all your side seems to
12 be doing is doubling down on this -- what I believe to be a
13 false assertion -- that Meta is stonewalling you.

14 I am -- I am more convinced than ever -- especially after
15 reading Judge Hixson's rulings -- discovery rulings -- that
16 this is either entirely or almost entirely the fault of the
17 Plaintiffs' legal team.

18 And so, I just -- I don't really know what to do with
19 that. I have got -- you know, I have got a newly constituted
20 legal team in the Kadrey case that sort of generally,
21 theoretically I would have confidence in.

22 And, you know, generally if they were able to articulate
23 for me what more they need that they don't have and why, that
24 then I might be inclined to defer to.

25 But instead of filing a motion where you clearly

1 articulated what more it is that you need for adjudication of
2 the fair use issue and sort of give me a roadmap for how we can
3 get there, you're -- you know, instead of saying, "Sorry, we
4 didn't get it before but here is our plan for getting it now,"
5 you are again accusing Meta of stonewalling and I think falsely
6 accusing Meta of stonewalling.

7 And so, I'm left not knowing how to handle this renewed
8 motion for an extension.

9 **MR. BOIES:** I appreciate the Court's difficulty there.
10 And I don't think that we would say that the problem is simply
11 Meta stonewalling.

12 I do think -- and maybe we have not made that record
13 adequately -- but I do think that there are substantial gaps in
14 what Meta has produced, and some of that stuff because of its
15 recent production we are not in a position to be absolutely
16 comprehensive about it.

17 I can give you some examples. One of the issues is -- as
18 the Court is aware -- Meta has a series of versions of its
19 Llama product.

20 And we know we do not have all of the training materials
21 for the first, and we know that we do not have all of the
22 training materials for the most recent. We are not able to
23 determine whether we have a lot of the training materials for
24 Llama 2, for example.

25 This is something that I think a 30(b)(6) deposition --

1 which we have scheduled, and as the Court is aware, we have
2 been given 16 hours to take -- I think we will reveal the
3 extent to which we are right that there is stuff that we don't
4 have or perhaps we are wrong.

5 With respect to the schedule, you know, as any Plaintiff,
6 we are anxious to move along; and I, you know, regret that we
7 are in the position that we are in right now.

8 Since we were brought on, we have devoted a very
9 substantial team to try to understand the documents that exist,
10 the documents that don't exist. We have made a lot of progress
11 in that.

12 You know, I would -- I would say to the Court that I don't
13 think that you will have the record that would be desirable if
14 we try to wrap this up in two weeks.

15 I think that we can -- if we limit this to the fair use
16 issue -- and the Court on September 20th said that there were
17 five points that the Court believed were not disputed. If
18 those points are not disputed and we limit this to fair use, I
19 think we can move very expeditiously.

20 Since the September 20th hearing and since we got
21 involved, Meta has at least been ambiguous as to whether their
22 summary judgment motion is going to be limited to fair use and
23 also ambiguous as to whether or not they dispute the five
24 points. Those are two things that we think is very important
25 to understand before the Court sets the schedule.

1 The --

2 **THE COURT:** Well, I mean, to be fair to them at the
3 last hearing, they made pretty clear that there was a good
4 chance that the summary judgment motion would not be limited to
5 fair use; right.

6 **MR. BOIES:** But if that's the case, Your Honor, I
7 really think that the -- I mean, just -- and the Court knows
8 and I don't because I wasn't here -- but just looking at the
9 record that we reviewed, it looks like that what was the focus
10 of this was the belief -- maybe it was erroneous but it was the
11 belief on our part -- and I think the Court's part -- that this
12 was going to be limited to fair use.

13 If it is not going to be limited to fair use, one of the
14 things the Court said is we need to know what is going to be on
15 the agenda. And although Meta increasingly says there is going
16 to be more than fair use, we still don't have a list of what
17 those issues are.

18 And again, I would urge the Court that before setting the
19 schedule, it's important that we know what the issues are for
20 summary judgment.

21 **MS. HARTNETT:** Your Honor, if I may respond on that.

22 **THE COURT:** Sure.

23 **MS. HARTNETT:** Respectfully, I think some of what you
24 just heard is actually not accurate unfortunately including
25 that we have not provided a list of potential summary judgment

1 arguments beyond fair use, which we expect to be the bulk of
2 our summary judgment motion.

3 We reserved the right on our call with Plaintiffs'
4 Counsel -- that Mr. Boies was not on -- to potentially argue a
5 standing issue, which would just be if someone's works are not
6 in the data set or if they don't have right to the copyright.
7 We could also just file a motion on that separately later if
8 that is more straightforward. There also could be a legal
9 issue about whether something is copying or not. We would
10 expect that to be brief. There is not a mystery here about the
11 issues.

12 And I would move on to say on the issues about the
13 smattering of arguments being made about source code dumps or
14 whatever else, those are all -- I don't need to -- I'm happy to
15 get into the minutia because I know the facts on those. The
16 hard drive, for example, was mislabeled by mistake. They knew
17 what it was. They actually have a 30(b)(6) topic on the drive,
18 so they know what it was. It is not a mystery.

19 The source code production this week were pool requests
20 that they asked for as a supplement. And the source code is a
21 red herring anyway because it is really not the point of the
22 fair use argument.

23 So, they do -- we have been working to get them what they
24 want. They have it. And I really think it is important to
25 note, the six depositions they have yet to take are on the

1 topics that they claim to need more on. They have one who is
2 going to be knowledgeable about a data set other than books 3.
3 They have that deposition. They could take it.

4 They have the -- they have the head of AI, the kind of
5 leader in the AI development, Mr. LeCun. They could take that
6 deposition. They have a person that has dealt with licensing
7 issues. They can take that deposition.

8 So, they have refused to take three depositions. They have
9 refused a date for another. They have a 30(b)(6) that has not
10 actually been scheduled yet, but we are happy to schedule that.

11 And so from our perspective, they just need to take their
12 depositions. We can finish up any cleanup issues with Judge
13 Hixson. Those motions would be due on Monday. So that's yet
14 another way in which they are using the time to re-argue the
15 schedule when they should just be doing the cleanup discovery
16 with Judge Hixson.

17 And if they have a problem with the source code
18 production, the right answer wasn't to come ask for more time
19 with you. It was to actually bring a motion before Judge
20 Hixson and they haven't done that.

21 **THE COURT:** Well, maybe they are doing that on Monday.

22 **MS. HARTNETT:** Well, we haven't met and conferred on
23 anything. And that's really important, Your Honor. Judge
24 Hixson on our calls has been available on short notice. He has
25 resolved everything promptly and on one of our last calls said,

1 "Tell me. Is there more coming? Tell me now. I will get
2 ready for it." One of those calls was attended by new counsel.

3 So, the notion that the right thing to do is to re-argue
4 the schedule over and over is wrong. The right thing to do is
5 to take the depositions and go to Judges Hixson if there is a
6 problem with our production.

7 **THE COURT:** Okay.

8 **MR. BOIES:** Your Honor, I would -- I would suggest to
9 the Court that without an adequate record and without a class
10 certified, resolving the summary judgment for the named class
11 representatives is not a productive approach.

12 We are not asking for an extensive delay. The delay that
13 we are asking for is not inconsistent with either keeping or
14 very closely keeping the summary judgment schedule. We can
15 overlap some of the work that needs to be done.

16 But I think it will -- I think it is important that the
17 Court have an adequate record, and I think the Court recognizes
18 that the record that's been made right now is not adequate for
19 a decision that is going to have an ability maybe to put some
20 of these issues at rest.

21 You know, we can argue how we got here but we are where we
22 are right now; and -- and I think the Court knows that there is
23 not an adequate record here.

24 I think the Court knows that we are going to make an
25 effort very expeditiously to address these issues. And if the

1 only issues on other than fair use are standing and the legal
2 issue of copying, if that's all that we are talking about and
3 if the five issues that the Court said on the 20th that you
4 thought were undisputed remain undisputed, this is something
5 that we can move very expeditiously on; and we are committed to
6 doing that, but it's not -- but with respect, it's not two
7 weeks.

8 You know, whether it is 60 days or 30 days or 90 days, you
9 know, I think is something that people may be able to differ
10 on; but I would -- you know, we are not asking for six months.
11 We are also saying that two weeks isn't going to do it.

12 **MS. HARTNETT:** Your Honor, if I may, on the issue that
13 Mr. Boies just raised about having the class come second would
14 not make sense. That's actually the bifurcation that
15 Your Honor ordered at the beginning of this case.

16 So, the summary judgment is going to come before the class
17 because that's the schedule that you set.

18 And then to the extent we are talking about -- I just go
19 back to your order, and it derives from the good cause standard
20 itself. What you said on the 20th of September is what the
21 rules require, which is that they come back with something that
22 is critical for the resolution of fair use. They have to
23 identify something missing, and respectfully you have heard
24 that the record is horrible but nothing specific.

25 **THE COURT:** Yeah. I guess the -- their best argument,

1 which they haven't really made but I will sort of make for them
2 now, is that the Plaintiffs really messed up by not moving the
3 case forward in an expeditious fashion.

4 They found themselves stuck up against the discovery
5 cut-off and hadn't come close to doing the work that they
6 needed to do to get the case ready to be adjudicated.

7 New counsel has come in now with the ability and the
8 resources to get the case ready for adjudication, but they need
9 a little more time because they are new to the case -- you
10 know, they need a little more time to learn the case and learn
11 what's in the discovery record and then augment the discovery
12 record.

13 And it's an important case. You know, it's a case that --
14 I mean, obviously, we are only in the district court; and what
15 happens in the district court is never all that important, but
16 it is an important case that needs to -- you know, we need a
17 ruling.

18 And, you know, it implicates not just Meta but all these
19 other companies and all these other authors. And, you know, we
20 need a couple more months to make sure we are getting it right
21 now that a new legal time is in charge.

22 I mean, that I think is the argument for, you know,
23 extending this out a couple of months. Again, we still have
24 got to figure out what we are doing with this other case. That
25 would be the argument for extending this out for a couple of

1 months; to make sure that, you know, any holes in the discovery
2 record can be filled before the matter is adjudicated.

3 **MS. HARTNETT:** Can I give you one example, though? I
4 hear you and I think that is somewhat the argument they have
5 been making but not with the specificity that we believe
6 Your Honor asked for at the last hearing, which could be
7 developed if they -- you know, but we need that specificity.

8 The source code is a good example. The Plaintiffs'
9 Counsel -- existing Plaintiffs' Counsel did not actually ask
10 for source code in an RFP. It is apparently now important to
11 them.

12 Meta provided the source code any way. They have had it
13 since May. They have reviewed it. My colleague can speak to
14 it if necessary.

15 So, there is an example of something where, okay, was that
16 the best that could have been done? Probably not. Did we --
17 is the record actually okay? Yes, it is.

18 And I think that's really what I'm trying to underscore
19 from my client's perspective here. We are not trying to help
20 the other side win, but we have been litigating in good faith
21 providing the witness' availability. We are here to complete
22 discovery.

23 And so, from our perspective two more months of getting a
24 redo when a redo is not necessary -- there is not a record
25 showing there is a redo necessary -- is unfair to us because

1 just yesterday we had our Vice President of AI sit for a
2 deposition all day. That happened. The other depositions
3 should happen.

4 So, I just -- I do think, sure, in some case could there
5 be a record where this is required a redo? Yes. Has the
6 record been made here that there should be a redo that good
7 cause exists? I don't believe so.

8 A lot of aspersions have been cast. General statements
9 have been made. There is nothing that they have been pointing
10 to relative to the fair use analysis that they don't have or
11 won't get from the depositions coming up of six very key
12 witnesses to the dispute.

13 We believe that should happen. You should give a little
14 more time for that to happen. Hopefully their word means
15 something and we can get them done this time. They can come
16 back later if they need to with good cause down the road, but
17 it shouldn't be an open season now.

18 **THE COURT:** Yeah, I hear what you are saying. Okay,
19 well, let me give all of this a little bit more thought. And
20 obviously I would not make a decision about whether to stay the
21 second case or consolidate the second case into the first case
22 without giving you-all an opportunity to be heard further on
23 that right.

24 But let me -- let me give some thought to everything that
25 we have discussed so far and issue a ruling on the case

1 schedule.

2 And after I issue a ruling on the case schedule, we can
3 decide -- we can endeavor quickly to figure out what role this
4 second case is going to play, if any, in the adjudication of
5 the issues that we are scheduled to adjudicate. All right.

6 **MR. BOIES:** Thank you, Your Honor.

7 **THE COURT:** Thank you.

8 **MS. HARTNETT:** Thank you, Your Honor.

9 **MS. GEMAN:** Thank you, Your Honor.

10 (Proceedings adjourned at 1:42 p.m.)

11 ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: October 7, 2024



Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter